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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

RICARDO MENDOZA, et al.,

Cross-complainants and
Appellants,

v.

CHUNG & ASSOCIATES,
LLC,

Cross-defendant and
Respondent.

B294223

(Los Angeles County
Super. Ct. No. BC677815)

APPEAL from an order of the Superior Court of Los Angeles County, Gregory W. Alarcon, Judge. Dismissed.

Law Office of Michael A. Long, Michael A. Long; The Landau Group, Zachary R. Landau; and Melinda Romines for Cross-complainants and Appellants.

The Kernan Law Firm, S. Michael Kernan, and R. Paul Katrinak for Cross-defendant and Respondent.

Ricardo Mendoza and Xavier Ruffin appeal from the trial court's order granting Chung & Associates, LLC's (C&A) special motion to strike the fourth cause of action (for violation of the Tom Bane Civil Rights Act under Civil Code section 52.1) in Mendoza and Ruffin's cross-complaint. Mendoza and Ruffin's notice of appeal was not timely filed under California Rules of Court, rule 8.104(a)(1)(B).¹ We are, therefore, without jurisdiction and will dismiss the appeal.

BACKGROUND

C&A employed Mendoza and Ruffin from 2016 to January (Ruffin) and April (Mendoza) 2017. In September 2017, C&A filed suit against Mendoza and Ruffin, stating a variety of causes of action based on alleged breaches of Mendoza and Ruffin's employment agreements and alleged post-employment retention and use of C&A's proprietary information. C&A filed a first amended complaint in December 2017 based on the same core allegations. On March 13, 2018, Mendoza and Ruffin filed a cross-complaint alleging as its fourth cause of action violations of the Tom Bane Civil Rights Act under Civil Code section 52.1.

C&A filed a special motion to strike the cross-complaint's fourth cause of action under Code of Civil Procedure section 425.16 (the Anti-SLAPP statute).² The trial court heard C&A's motion at a hearing on June 8, 2018 and issued its ruling granting the motion the same day. On June 20, 2018, C&A's

¹ Further rule references are to the California Rules of Court.

² "SLAPP is an acronym for strategic lawsuit against public participation." (*Salma v. Capon* (2008) 161 Cal.App.4th 1275, 1283, fn. 4.)

counsel served by mail a notice of ruling on the Anti-SLAPP motion attaching a copy of the trial court’s written ruling on counsel for Ruffin and Mendoza.

Mendoza and Ruffin filed a notice of appeal from the trial court’s order granting the Anti-SLAPP motion on December 3, 2018. C&A filed a motion asking us to dismiss Mendoza and Ruffin’s appeal as untimely under rule 8.104.

DISCUSSION

Rule 8.104(a)(1) states, in pertinent part: “[A] notice of appeal must be filed on or before the earliest of: [¶] . . . [¶] . . . 60 days after the party filing the notice of appeal serves or is served by a party with a document entitled “Notice of Entry” of judgment or a filed-endorsed copy of the judgment, accompanied by proof of service; or [¶] . . . 180 days after entry of judgment.” An order granting an Anti-SLAPP motion as to some but not all causes of action is immediately appealable. (Code Civ. Proc., § 904.1, subd. (a)(13); *Old Republic Construction Program Group v. The Boccardo Law Firm, Inc.* (2014) 230 Cal.App.4th 859, 866, fn. 4.) “ ‘If a judgment or order is appealable, an aggrieved party *must* file a *timely* appeal or forever *lose* the opportunity to obtain appellate review.’ ” (*Norman I. Krug Real Estate Investments, Inc. v. Praszker* (1990) 220 Cal.App.3d 35, 46, original italics; accord *Maughan v. Google Technology, Inc.* (2006) 143 Cal.App.4th 1242, 1247 (*Maughan*).)

C&A contends that based on its June 20, 2018 service of the notice of the trial court’s ruling on the Anti-SLAPP motion, the deadline under rule 8.104 for Mendoza and Ruffin to file any

notice of appeal was August 20, 2018.³ Mendoza and Ruffin's December 3, 2018 notice of appeal was, according to C&A, untimely. C&A argues that Mendoza and Ruffin have not properly invoked our jurisdiction and that we must, therefore, dismiss the appeal.

Mendoza and Ruffin respond that the record contains no notice of ruling that would have triggered either of rule 8.104's 60-day deadlines. Their notice of appeal, according to Mendoza and Ruffin, was subject to rule 8.104's 180-day deadline because the record does not demonstrate either of the events that would trigger a 60-day deadline. According to Mendoza and Ruffin, their December 3, 2018 notice of appeal was within the *180-day* filing deadline and was, therefore, timely.⁴

Mendoza and Ruffin's argument relies entirely on the premise that the record on appeal contains no evidence that any document was served that would trigger a 60-day deadline under rule 8.104(a)(1)(A) or (B).

In their opposition to the motion to dismiss, Mendoza and Ruffin claim: "[T]he Declaration of R. Paul Katrinak filed on April 6, 2020 attached and referenced only two emails in exhibits A and B thereto. Mr. Katrinak's declaration and the moving papers failed to cite to any documentary evidence of proof of

³ August 19, 2018 was 60 days after June 20, 2018. But August 19, 2018 was a Sunday. If C&A's notice of ruling triggered a 60-day deadline under rule 8.104, therefore, any notice of appeal must have been filed by August 20, 2018—the Monday following the Sunday expiration of the time to appeal under rule 8.104. (See Code Civ. Proc., §§ 12, 12a.)

⁴ Wednesday, December 5, 2018 was 180 days after June 8, 2018.

service of a file-endorsed copy of the judgment accompanied by proof of service.” This is incorrect. There are two declarations attached to the motion. Mr. Katrinak’s declaration attaches the “filed-endorsed copy of the” trial court’s ruling, as required by rule 8.104(a)(1)(B) to trigger the 60-day deadline. The emails the opposition references are attached to a *second* declaration—Mr. Kernan’s.

Mendoza and Ruffin *also* contend that “statements and exhibits in Mr. Katrinak’s declaration are not of record and must be disregarded.” Mendoza and Ruffin cite no authority to support this proposition, and we are aware of none. Contrary to Mendoza and Ruffin’s assertions, rule 8.54 provides that “a party wanting to make a motion in a reviewing court must serve and file a written motion stating the grounds and the relief requested and identifying any documents on which the motion is based.” (Rule 8.54(a)(1).) The rule continues: “A motion must be accompanied by a memorandum and, *if it is based on matters outside the record, by declarations or other supporting evidence.*” (Rule 8.54(a)(2), italics added.) The rules of court expressly contemplate documentary evidence supporting motions to the appellate courts beyond what is contained in the record; C&A’s motion has provided us with evidence in the proper form. (See *Norco Delivery Service, Inc. v. Owens Corning Fiberglas* (1998) 64 Cal.App.4th 955, 961, fn. 3.)

C&A has established that it served on Mendoza and Ruffin a filed-endorsed copy of the trial court’s order granting its Anti-SLAPP motion in this matter on June 20, 2018. Mendoza and Ruffin’s deadline to file a timely notice of appeal, therefore, was August 20, 2018. The December 3, 2018 notice of appeal was

untimely. (Rule 8.104(a)(1)(B); see *Maughan, supra*, 143 Cal.App.4th at pp. 1246-1247.)

DISPOSITION

The appeal is dismissed. Respondent is awarded costs on appeal.

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CHANEY, J.

We concur:

BENDIX, Acting P. J.

SINANIAN, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.